IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 23540-8-III**
	)	**(consolidated with**
Respondent,	)	**No. 24630-2-III)**
	)	
v.	)	
	)	
JAMES ANTHONY STINSON,	)	**Division Three**
	)	
Appellant.	)	
	)	
In the Matter of the Personal Restraint Petition of:	)	
	)	
JAMES ANTHONY STINSON,	)	
	)	**UNPUBLISHED OPINION**
Petitioner.	)	
	)	

SCHULTHEIS, J. — Spokane County sheriff's deputies stopped a van they suspected had been used to deliver controlled substances. Upon recognizing the driver—James Stinson—as a person whose driver's license had been suspended, the deputies arrested him. A baggie containing controlled substances was found in his body during booking. Mr. Stinson's motion to suppress this evidence was denied and he was

found guilty on stipulated facts of possession of cocaine and heroin.

On appeal, Mr. Stinson contends the deputies did not have a specific, articulable reason to justify his warrantless detention. He also argues that his arrest was unlawful because it was based on former RCW 46.20.289 (2002), which was invalidated by *City of Redmond v. Moore*, 151 Wn.2d 664, 91 P.3d 875 (2004). Mr. Stinson raises several additional issues regarding his sentence in a consolidated personal restraint petition. Because we conclude the traffic stop was justified and Mr. Stinson's reliance on *Moore* is not justified by the record, we affirm. We decline to address the personal restraint petition as irrelevant to this case.

Facts

Sometime in September 2003, a confidential informant began assisting sheriff's deputies in their investigation of prostitution, property crimes, and controlled substances crimes in Spokane's Maple Tree Motel and adjoining trailer park. The informant, who participated in controlled buys and supplied information that eventually led to at least 15 arrests and numerous convictions, reported that Trimarca "Lil' Homicide" Cooper and his girl friend, Kristy Davis, were delivering heroin and crack cocaine in a distinctive mobile car wash van painted with bubbles (the bubble van). Ms. Davis worked for the car wash and used the bubble van for personal transportation outside work. Although Mr. Cooper and Ms. Davis did not live at the motel/trailer park, they frequently visited the area in the

bubble van.

Beginning the evening of January 14, 2004, deputies conducted an overnight surveillance of suspected criminal activity at the motel/trailer park. In particular, the deputies watched for prostitution and short-stay vehicle and foot traffic that indicated drug activity. One goal of the surveillance was to identify and distinguish between residents of the trailer park and transients. As part of the investigation, the deputies conducted an undercover controlled purchase of heroin at the motel.

When surveillance began, the bubble van was seen parked in a dark area near the south gate to the trailer park. The deputies observed for three hours a high volume of traffic coming in part from the south gate of the park to a particular trailer for visits of less than five minutes. After a short break, the deputies returned to their surveillance posts and discovered that the bubble van was gone. Around midnight, the deputies saw the bubble van return to the motel/trailer park property and then leave again with a black male driving. Mr. Cooper is a black male. Because the deputies assumed Mr. Cooper was driving the bubble van and suspected he was engaged in illicit drug activities, they called for a marked patrol car to stop, identify, and question the driver of the bubble van about the activities observed at the motel/trailer park.

Deputies stopped the bubble van about six or seven blocks from the trailer park and asked the driver and passenger for identification. One of the deputies immediately

recognized Mr. Stinson as the driver and knew that Mr. Stinson probably did not have a license. A check of the Department of Licensing records proved that Mr. Stinson's driver's license had been suspended in the third degree. Mr. Stinson was arrested for driving with a suspended license. Deputies found over $300 in his right sock. Later, while he was being searched at the jail for booking, an officer found a baggie containing cocaine and heroin in Mr. Stinson's rectum.

In March 2004, Mr. Stinson was charged by information with one count of possession of a controlled substance: cocaine, and one count of possession of a controlled substance: heroin. Former RCW 69.50.401(d) (1998). He moved to suppress the evidence in July 2004. After a hearing, the trial court entered findings and conclusions denying the motion to suppress, and later found him guilty of both charges after a bench trial on stipulated facts. Mr. Stinson was sentenced for these crimes and other convictions adjudicated around the same time. Using an offender score of 10.5, the trial court sentenced him to 24 months of incarceration. This appeal and personal restraint petition followed.

Investigatory Stop of a Vehicle

Mr. Stinson first contends the investigatory stop of the bubble van was unlawful because the deputies had no articulable, reasonable suspicion that he was engaged in criminal activity. If the initial stop was unlawful, any evidence seized subsequent to the

stop was inadmissible as the fruits of the poisonous tree. *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986). We review the trial court's findings of fact on a motion to suppress for substantial evidence, and the conclusions of law de novo. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999).

Warrantless seizures and searches are presumed unreasonable unless they qualify as one of the jealously guarded exceptions to the rule. *State v. Kinzy*, 141 Wn.2d 373, 384, 5 P.3d 668 (2000). Under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), a warrant is not needed to stop and question a suspect if law enforcement officers have a reasonable, articulable suspicion that criminal activity has occurred or is about to occur. *Kinzy*, 141 Wn.2d at 384-85; *Mendez*, 137 Wn.2d at 223. Such a stop is justified under the fourth amendment of the United States Constitution and article I, section 7 of the Washington State Constitution if the officer can specify particular facts and rational inferences that reasonably warrant the intrusion. *Mendez*, 137 Wn.2d at 223. Considering the totality of the circumstances known to the officer at the time, we ask whether the officer could reasonably surmise that there was a substantial possibility criminal activity was afoot. *Kinzy*, 141 Wn.2d at 384-85; Mendez, 137 Wn.2d at 223; *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991).

Mr. Stinson contends the deputies who stopped the bubble van had no reasonable suspicion he was involved in criminal activity. This is true. But the deputies did not stop

the vehicle due to suspicions directed at Mr. Stinson. The deputies testified that they thought the bubble van had been used for illicit drug deliveries and that Mr. Cooper was the driver. According to their written reports and testimony, the deputies based their suspicions on tips from a confidential informant, the complaints of neighbors, and their own surveillance.

An informant's tip may justify an investigatory detention if the circumstances suggest that the informant was reliable, the information was obtained in a reliable fashion, or corroborative observation suggests criminal activity. *Kennedy*, 107 Wn.2d at 7. In this case, the reliability of the confidential informant was supported by the testimony of a deputy who stated that the informant had given reliable information beginning in September 2003 that had resulted in two controlled purchases of illicit drugs and information on over 30 gang members. The confidential informant told the deputies in December 2003 that the bubble van was being used by Mr. Cooper and Ms. Davis to conduct drug deals. Mr. Cooper had been investigated since 2002 as an "Insane Gangsta Crip" gang member and drug dealer. Report of Proceedings (July 29, 2004) at 50. Officers had seen the bubble van parked at the residence of Mr. Cooper and Ms. Davis, and had seen Ms. Davis wearing a jacket with the bubble car wash emblem. On the basis of this history, the informant's tip that the bubble van had been used to deliver controlled substances in the past was properly considered reliable.

Police observed the bubble van parked near the south gate of the trailer park on the night of surveillance, and further noted frequent foot traffic from the south gate to a particular trailer, where people stayed a short time. The deputies had information that there was drug activity occurring in the trailer park area. Some of this information came from neighbor complaints. In their experience, frequent brief visits to a site indicated drug trafficking. Additionally, Mr. Cooper had been observed in the trailer park earlier that day. Although no deputy saw suspicious activity in or around the bubble van, the totality of the circumstances supports the reasonable suspicion that Mr. Cooper was involved in drug trafficking at the trailer park during the period of surveillance. Further, when a deputy caught a glimpse of the bubble van leaving the trailer park with a black man at the wheel, he had a rational basis to believe that the driver was Mr. Cooper.

Under the totality of the circumstances, the deputies' suspicion that Mr. Cooper was driving the bubble van and that Mr. Cooper had been or was currently engaged in criminal conduct was reasonable. This suspicion justified a stop of the bubble van to identify the driver and conduct a brief investigation. *Kennedy*, 107 Wn.2d at 8; *State v. Pressley*, 64 Wn. App. 591, 595, 825 P.2d 749 (1992).

Arrest Based on an Unconstitutional Statute

Mr. Stinson further contends that even if the initial stop was justified, his arrest was invalid because it was predicated on an unconstitutional statute. In *City of Redmond*

v. Moore, 151 Wn.2d 664, 677, 91 P.3d 875 (2004), the Supreme Court struck down former RCW 46.20.289 and former RCW 46.20.324(1) (1965), which mandated suspension of driver's licenses under certain circumstances without a hearing, because the statutes did not provide adequate due process safeguards to ensure against erroneous deprivation of a driver's license. *State v. Pulfrey*, 154 Wn.2d 517, 529, 111 P.3d 1162 (2005). Mr. Stinson's argument fails for two reasons.

First, *Moore* struck down only two sections of the driver's license chapter. As noted in *Pulfrey*, "RCW 46.20.342(1)(c), the statute that defines driving while license suspended in the third degree, lists six different reasons for the suspension that render the offense a third degree violation, only one of which is now suspect because of *Moore*." *Pulfrey*, 154 Wn.2d at 529. Accordingly, for Mr. Stinson to argue that his arrest for driving while license suspended in the third degree was invalid, he must show that his license was suspended for the one reason under RCW 46.20.342(1) that may be unconstitutional under *Moore*. *Id.* But he does not do so. Nothing in the record indicates the basis for the suspension of his license. Because he has not shown that he is entitled to relief on this basis, we cannot consider his contention. *Id*. at 530; *State v. Materne*, 131 Wn. App. 734, 738, 129 P.3d 298 (2006).

Second, even if Mr. Stinson's license was suspended pursuant to an unconstitutional subsection of RCW 46.20.342(1), he is not entitled to relief. Generally

an arrest is valid if based on probable cause, even if it is predicated on a statute that is later ruled unconstitutional. *State v. Carnahan*, 130 Wn. App. 159, 165, 122 P.3d 187 (2005) (citing *Michigan v. DeFillippo*, 443 U.S. 31, 37-38, 99 S. Ct. 2627, 61 L. Ed. 2d 343 (1979)). We will find the arrest invalid only if the statute is so flagrantly unconstitutional that any reasonably prudent person would be bound to see its flaws. *Id*. (quoting *State v. White*, 97 Wn.2d 92, 103, 640 P.2d 1061 (1982)).

Here, although some of the statutes setting out license suspension procedures were invalidated by *Moore*, the crime of driving while license suspended remains a valid offense. *State v. Potter*, 156 Wn.2d 835, 842, 132 P.3d 1089 (2006). Accordingly, the narrow exception for a grossly and flagrantly unconstitutional statute does not apply. *Id*. at 842-43. The fact that the Department of Licensing records showed that Mr. Stinson was driving while his license was suspended was sufficient to establish probable cause for his arrest. *State v. Gaddy*, 152 Wn.2d 64, 74, 93 P.3d 872 (2004) (Department of Licensing records are presumptively reliable and provide probable cause even if the information later proves incorrect).

Personal Restraint Petition

Mr. Stinson filed three copies of a personal restraint petition (PRP) in the form of a "Motion to Correct or Modify Judgment and Sentence." We consolidated two of the PRPs to two different appeals to this court. The PRP consolidated with this appeal is the

same one consolidated with cause number 23541-6-III. Because the issues raised by Mr. Stinson are relevant primarily to the sentence imposed in cause number 23541-6-III, we decline to address the PRP issues in this appeal.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Schultheis, J.

WE CONCUR:

_____ _____
Sweeney, C.J. Kulik, J.